IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER No. 824 of 2006

M/s.Saileela Stores .. Appellant
versus
Municipal Corporation of Gr. Mumbai & anr .. Respondents

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Mr.P.K. Dhakephalkar Sr.Counsel i/b L.J. Law for the appellant.

Ms.Nisha Dabhade for BMC.

CORAM : D.G. KARNIK, J

DATED : 30th November 2006

P.C.:

1. Heard learned counsel for the appellant.

2. This appeal is directed against the order dated 9th October 2006 passed by the learned Judge of the City Civil Court dismissing the appellant's motion for injunction against the respondent municipal corporation.

3. The suit relates to the Shop No.2A at Narayan

wadi, Khadilkar Road, Corner of Kakad wadi Bombay 400 004. The respondent issued a notice under section 314 of the Mumbai Municipal Corporation Act to the appellant for removal of the suit shop which was constructed unauthorisedly without any permission on a footpath on a public street at the corner of kakad wadi. The appellant thereafter filed the suit in the city civil court and obtained an ex-parte injunction. By the impugned order, the ad-interim injunction has been vacated.

4. Learned counsel for the appellant submits that the suit shop is not situated on a public street but is situated in the property belonging to the respondent no.2 trust. The appellant did not produce any demarcation certificate showing that the suit shop is located in the property of the respondent no.2. He only produced a rough sketch in the trial court. A copy of the sketch is filed at page 44 of the compilation. The said sketch clearly shows that the suit shop no.2A is out of synchronisation with the rest of the shops in the property of the respondent no.2. There is another circumstance. All other shops are numbered as Sr. Nos.2,3,4 i.e. by numbers. The suit shop is the only shop which is numbered with number followed by an alphabet "A" indicating that it is not the original

structure, serially numbered in the building plan.

5. Mr.Dhakephalkar, learned counsel for the appellant submitted that the respondent municipal corporation has assessed the suit shop for property taxes and therefore, the shop must be held to be authorised. In R.M. Tipnis Vs. B.M.C. reported in AIR 1979 Bom 10, this Court has held that corporation is entitled to assess even the properties which are unauthorised. Mere fact that a structure is assessed to tax could not show that the structure is authorisedly constructed.

6. There is no other material on record to show that the suit shop is authorised. The appellant has failed to prove even prima facie that the suit shop is situated on the private property belonging to the respondent no.2.

7. In the circumstances, there is no merit in the appeal which is hereby dismissed summarily.

8. Learned counsel for the appellant requests to grant injunction for some time. Since the appeal has been dismissed and no injunction was ever granted by this court, the request is rejected.

(D.G. KARNIK, J)